DOCUMENT RESUME

ED 302 963 EA 020 704

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TITLE The Impact of Changing World Views on Educational and Legal Philosophy: The United States as Exemplar.
PUB DATE Dec 88
NOTE 15p.; Paper presented at the Annual Meeting of the Far Western Philosophy of Education Society (Calgary, Alberta, December 1988).
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Viewpoints (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Civil Liberties; Codification; *Court Litigation; *Cultural Context; *Educational Legislation; *Educational Philosophy; Elementary Secondary Education; Federal Courts; Laws; *Western Civilization
IDENTIFIERS Supreme Court; *West Virginia Board of Education v Barnette

ABSTRACT

This paper uses the U.S. Supreme Court's decision in the case of "West Virginia Board of Education v. Barnette" to illustrate the impact of changes in Western Culture world views of reality on educational and legal philosophy. The report argues that Western culture has replaced vertical assumptions, with its conception of individuals who function in a collective reality which "transcends" the natural order of things, with horizontal Greco-Roman naturalism, which posits that the natural order of things "includes" individual reality. The Court's horizontal assumptions were applied in the 1943 case of "West Virginia Board of Education v. Barnette" which deferred to individual decision-making against infringements made by institutions. The report concludes by favoring the retention of both vertical and hoirzontal assumptions in educational decision-making and teaching on the basis that these assumptions best preserve individual liberties, collective institutions, and thus democratic forms of government. (JAM)

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ED302963

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A paper presented at the Far Western Philosophy of Education Society
University of Calgary
Calgary, Alberta, Canada
December 1988

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Neil J. Flinders and Mathew M. F. Hilton

(December 1988)

A Supernatural or a Natural Order

A classic tension (perhaps the classic tension) in human culture is the struggle between what the Greeks percieved as the mantic versus the sophic view,[1] what has been identified in ancient Judaism as the vertical versus the horizontal traditions,[2] and what modernists term the supernatural versus natural perspectives.[3] H. C. Wright describes this choice of basic assumptions as "the central problem of intellectual history." He notes that "in Western civilization, which includes all the major cultures in both America and Canada, [there is] a perennial conflict of spiritualities derived from comprehensive world-views that are truly contradictory and permanently irreconcilable."[4] These world-views are reflected in (a) the vertical view of Judeo-Christian supernaturalism, which holds to a dualistic metaphysics, claiming that reality includes but transcends the natural order; and (b) the horizontal view of Greco-Roman naturalism, which is based on a monistic metaphysics which claims that all reality is included within the natural order. The issue is this: In the search for knowledge and definition, is one limited to the resources of the unaided human mind, or does knowledge also come from "another world" by inspiration or revelation?

J. L. Thrower, in his The Alternative Tradition: Religion and the Rejection of Religion in the Ancient World (1980), explores phenomenon in the cultures of antiquity. J. H. Randall's The Making of the Modern Mind (1926), F. L. Baumer's Religion and the Rise of Skepticism (1960), J. Turner's Without God, Without Creed: The Origins of Unbelief in America (1985) contribute to the documentation of the emergence and subsequent dominance of naturalism in modern Western society.[5] Turner succinctly focuses the issue in the central question of his meticulous study: "Why did it become possible not to believe in God?" The answer to this question is a description of what J. H. Randall called The Making of the Modern Mind (1926). It explains how that segment of society which favors the exclusively naturalistic world-view came to dominate the academic intellect of Western culture.

These studies and those cited in footnote five are examples of many scholarly works that witness that humans do struggle over the selection of assumptions from which to fashion a view of the world. And what they select makes a difference. For example, W. W. Wagar in his World Views: A Study in Comparative History (1977) not only seeks "to chart and explain the principal differences between several great

national traditions . . . [but on the basis of this] to predict the world view of the next century." (p. vii). Some people may not understand and others may ignore the mental constructs of their own world-view, but few of those who seriously consider the evidence deny the critical impact of the inward world that humans mentally construct on the outward world in which we live. One's personal world-view is the navigational center that shapes both the thoughts and acts of personal experience. Central to the many variations of these world views is the selection of the primary assumption: Is the natural order all there is? or Is there something in addition to the natural order? The way one answers this question charts the course of one's culture.

The Impact of World View Assumptions on Education

Extensions of these primary assumptions over the past century have reshaped the psychology, learning theory, curriculum, and philosophy of education in the West. Beginning, perhaps, with the influence of Ludwig Feuerbach (1804-1872) and similar thinkers, educational psychology evolved as a discipline susceptible to naturalism. However incomplete or mysterious the rationale of Feuerbach's total philosophy, the directional spirit of his 1850 statement typifies the direction we have been traveling in western society:

> The doctrine of foods is of great ethical and political significance. Food becomes blood, blood becomes heart and brain, thoughts and mind-stuff. Human fare is the foundation of human culture and thought. Would you improve a nation? Give it, instead of declamations against sin, better food. Man is what he eats.[6]

This perception of man as simply an extension of his naturalism fueled many later theorists, whether of behaviorists or cognitionists. The idea that humans are simply an animal organisms has dominated educational theory and practice during most of the twentieth century. This premise ruled some ideas in and others out.

The many studies of public school textbooks reveal the imprint of the naturalistic mindset. These studies show a steady decline in curricular content that credits or even acknowledges the possibility of transcendent or supernatural realities.[7] Academically, modernists are horizontalists. They live as a component in the natural order--sophics who by definition are without recourse to forces, influences, and realities that may transcend the natural order. Irving Kristol (1972) acknowledges that "already an entire generation exists which simply cannot beleive that American school textbooks used to extol 'self denial' as a virtue. . . . Our world is being emptied of its ideal content, and the imposing institututional facade sways in the wind."[8] George Roche (1987) observes that

> Public school curricula, strongly influenced and often controlled by anti-heoric academics, are awash in naturalistic explanations of life, and the denial of moral values.

> Courses in the sciences, especially the social sciences, are often outrightly hostile to religion. . . .Our public schools are close and real and well-known to us, and we all see the damage done them by anti-heroism. *I'll say again, it matters very much, and in our immediate affairs, how we think about the universe.*[9] (emphasis added).

Paul Vitz (1986) reports, regarding his NIE-funded study on public school textbooks, that

> Before I began research on this project, I was surprised by the amount of partisan political opposition to its funding. . . .It was clear that the deeply entrenched liberal education establishment did not want to fund any research capable of challenging their views. The education establishment, unable to see the obvious ideological character of their position, claimed that this project was politicizing education and education research.[10]

The word secular, derived from saecula, meaning an "age or period," characterizes the trend away from a Creator-oriented society toward a creature oriented society. Georgia Harkness writes that "Secularism is the organization of life as if God did not exist."[11] Arnold E. Loen adds, "secularism is being conformed to this world, the world which rebels against the fact that 'from him and through him and in him are all things.'"[12] The first sentence of the preface of Gabrial Vahanian's book entitled The Death of God reads, "Ours is the first attempt in recorded history to build a culture upon the premise that God is dead."[13]

A recent bibliographical study that examines the intents of schooling in Western culture and its antecedents provides a vivid contrast to the recency and possibly fragile position of the modern mindset. In annotated studies of preclassical antiquity, classical antiquity, the medieval period, the age of the renaissance and reformation, the modern period, and the American experiment itself, the extremity of the modern position becomes clearly framed. Schooling itself began, the record shows, as a temple exercise. L. Bastian, author of this study, reports that "the earliest schools of which we have any knowledge were established in ancient Sumer and Egypt. These early schools were always part of a temple complex."[14] H. Nibley explains,

> A Temple, good or bad, is a scale model of the universe, . . . a sort of observatory where one gets one's bearings on the universe. . . . [It is] the original center of learning, beginning with the heavenly instructions received there. It was . . . the home of the Muses, each representing a branch of study, and the scene of learned discussion among the wise.[15]

The "Greek enlightenment" of the fifth and sixth centuries B. C., according to F. Solmsen, challenged the ancient perspectives of that day. In principle," Solmsen says, "nothing was any longer taken for granted, and the fact that something was commonly practiced did not in the least protect it from criticism."[16] The conflict of the new thought with

the old ways became an intense issue. "The result was a psychology established on a purely secular basis, with no need for divine causation."[17] This new psychology, this new way of viewing man, "applies everywhere in man's life. It is a purely secular psychology whose principle tenent is the distinction between reason and a variety of irrational inclinations."[18] Then as today, many of the temples of learning appear to have become citidels of secularism, causing the value structure of the society to radically shift.

Following the golden age of Greece, the metaphysical dualism of near-eastern cultures (Egypto-Mesopotamian) faded in the face of Greco-Roman monism. The establishment of dualism in the form of post-Constantine Christianity has in many ways proven an accommodation more than a displacement of naturalistic metaphysics. Although a type of medieval Christian dualism prevailed for several centuries, secular seeds previously introduced eventually delivered the West [by the 19th century] once again to the monistic doorstep of a naturalistic secularism. B. C. Hardy described it this way:

> While the early Christians found little to admire in Graeco-Roman culture, they had, nevertheless to live in Roman Imperial surroundings. The injunction to be in but not of the world imposed a difficult if not impossible metaphysical requirement. In the attempt to avoid pagan error while employing pagan learning, Chrisitianity was led to contrive a set of interesting and sometimes contradictory formulae. The consequence was as profound in its implications for Medieval Christianity as for the traditions it replaced. . . . As time passed . . . there developed an inevitable spirit of accommodation.[19]

He points out first, that burgeoning numbers of Christians were employed in the public schools; second, that student study of the scriptures came only at the end of a rigorous period of preparation in secular fields--not at the beginning; and finally, that by the fourth century John Chrysostom could lament, "in our own day every man takes the greatest pains to train his boy in the arts and in literature and speech. But to exercise this child's soul in virtue, to that no man any longer pays heed."[20] The pattern is like a replayed record. The struggle with and the consequences of selecting a particular world view not only preceded the so-called Christian epoch, it flourishes today in our own society.

<u>Changes in World-View Assumptions by the Court has Impacted Legal Thought and Educational Practice in the United States</u>

M. F. Hilton's recent examination of U. S. Supreme Court opinions illustrates the significant impact, of shifting assumptions on the educational philosophy of a society via its legal channels.[21] Hilton's study involved a computer-facilitated, key-word search that identified more than 90,000 applications, from which some 10,000 relevant cases were

identified and opinions examined to determine the historical and present perspectives of the U.S. Supreme Court regarding education, morality, Deity, and religion. The data revealed changes in the presumptive context used by the Court in

(a) Pre-Fourteenth Amendment (1790-1868),

(b) Post-Fourteenth Amendement/Pre-Barnette decisions (1868-1943), and

(c) Post Barnette decisions (1943-1987).[22]

Although available space prohibits a full report, a brief synopsis will illustrate some of the ramifications.

Changes in the Court's Perspective

The changes evident in the Court's perspective regarding the nature of man, Deity, religion, jurisprudence and education follow earlier shifts from the vertical to the horizontal world view that occurred in academia. This presentation permits a review of only two basic concepts in law which affect the legal structure in which public and private education operate: (1) *What is the source of man's rights?* (2) *What is the nature of judicial review?* In the description which follows, theistic and natural law assumptions will be identified by the term"vertical," while secular, agnostic, scientific, and relativistic assumptions will be identified by the term "horizontal."

In the pre-Fourteenth Amendment period, (1790-1868), the Supreme Court opinions recognized and accepted vertical assumptions. These included (1) Humankind has a personal relationship with a Divine Creator, which is the source of inalienable rights; (2) A divinely given conscience enables humans to recognize the higher, natural law to which societal law and personal conduct are to be reconciled.

Arguing from these assumptions, the Court naturally gave equal deference to decisions of other governmental entities, because vertical assumptions presupposed that legislators and individuals were governed by the same theistically based, natural law recognized by the Court. In making decisions, Supreme Court jurists acknowledged their accountability to God, individual conscience, and country.

In the post-Fourteenth Amendment/Pre-Barnette period, (1868-1943), the Supreme Court began to vacillate. Eventually, the previously incorporated vertical assumptions were abandoned. The Court gradually ceased to recognize humankind's personal relationship with Deity as the source of inalienable rights. Efforts to reconcile human laws to a natural law standard through the use of a theistically based conscience faded. Relativistic standards arising

solely from societal consensus were adopted. Judicial deference to moral standards defined by nonjudicial institutions such as state legislatures, the family, and the school was justified on the basis of tradition. The Court itself came to favor the horizontal assumptions and applied them in a form it viewed as the impartial and exacting requirements of legal science.

In the 1943 case of West Virginia Board of Education v. Barnette, the Supreme Court imposed on the public schools what it perceived were the requirements of legal science, by striking down a compulsory pledge of allegiance as being against the religious prohibitions of the First and Fourteenth Amendment of the United States Constitution. This decision signified much more than a requirement to allow students not to participate in the Pledge of Allegiance for religious reasons. In its decision, the Court

(1) rejected the stare decisis relevance of prior precedent, which was grounded in natural law and theistic assumptions,
(2) rejected the role of legislative judgment in areas that could affect an individual's exercise of a right enumerated by the Bill of Rights,
(3) adopted a requirement of scientific proof from the field of education to prove the parameters of state action that would be considered constitutional, and
(4) changed its assumptions regarding the process by which individual internalization of societal values and cohesion occurs.

All of these changes reflect horizontal assumptions regarding the nature of mankind, Deity, government, education, and judicial review.

Legal Licence and Legal Expediency

The post-Barnette opinions demonstrate that the Court has continued its rejection of the vertical assumptions and increased its adherence to horizontal assumptions. This continuation could be characterized as creating legal license through legal expediency.

Legal license occurs when the Court upholds individual decision making in such a manner as to reject the determinations or impede the actions of the societal institutions which are assumed to transmit the values necessary for the continuation of a democratic American society.

Legal expediency occurs when, in the process of creating legal license, the Court either fails to define or apply in a consistent manner the (a) legal standards articulated by the Court to

justify decision-making or (b) contextual assumptions regarding evidence.

For several years the Court has applied a standard which requires that challenged legislation related to public education (1) have a secular purpose, (2) exibit a primary effect that neither advances nor inhibits religion, and (3) not foster an excessive entanglement with religion. [23] Unfortunately, the Court has not been consistent in its definition of the standard nor its use of contextual assumptions regarding evidence when these legal standards are applied. For example, if "the political considerations which have motivated [the legislation's] adoption or rejection" are of "no concern" in the Court's analysis of a secular basis for the challenged policy or practice,[24] why, thereafter, are the motivations of the sponsors of legislation relevant in the Court's analysis of legislative intent?[25]

Evidentiary assumptions regarding the nature of the parent-child relationship or the nature of students in the public school setting are not consistent in the First Amendment and non-First Amendment settings. For example, regarding the parent-school relationship, how can schools establish a loco parentis relationship with students in a First Amendment speech setting,[26] but not in a First Amendment religion,[27] nor a Fourth Amendment search and seizure setting?[28]

Inconsistency is also reflected in the Court's perceptions of the nature of public school students. For example, if "mature" public education students are determined to have the constitutional right to (1) express in a school setting their sentiments regarding divisive national warfare[29] and (2) decide, without assistance of parents or government, the religiously and morally "complex" decision regarding an induced abortion,[30] why is the same student assumed to be "coerced" into and considered incapable of discerning the difference between a discussion of theistic or natural law assumptions and specific, sectarian doctrine?

In addition to inconsistencies regarding the nature of the legal standard to be applied and the evidentiary assumptions regarding the context in which it is applied, it also appears that additional deference is afforded federal government decisions which are not as consistently afforded state governments.

Making Sense of the Court's Decisions

Notwithstanding these examples of achieving legal license through legal expediency, Supreme Court decisions can be harmonized to a large degree if we are willing to recognize two unarticulated but symbiotic assumptions implicit in the nature of legal license and legal expediency. *First*, vertical assumptions should not, as a matter of constitutional law, be a part

of the contextual framework for any governmental decision-making process. *Second*, judicially created "liberty"-- as distinct from the recognition of inalienable individual rights arising from a Divine Creator -- is best preserved by consolidation of power in the national government.

If these two propositions are valid and acceptable, the following conclusions seem warranted: (1) there is a basis for harmony in the Court's decisions during the post-Barnette era. (2) the contextual assumptions used by the Court are more influential than (a) the use of legal standards and (b) the review of factual findings in guiding the Court to its decision.

Impact of the Court's Abandonment of Vertical in Favor of Horizontal Assumptions

Changes in the thinking of the Court have laid the foundation for potentially conflicting positions in educational practice and possibly unsettling future decisions by the Court. The practical ramifications are illustrated by the following questions.

The question is not whether public schools may teach the historic existence of the Declaration of Independence, but rather, whether public schools may teach that the tradition of state constitutions which affirms similar assumptions is valid and legally binding?

The question is not whether college students are presumed to be at the level where the presentation of religiously based vertical assumptions are not "coercive," but rather, whether these assumptions may be presented in advanced placement classes taught at the high school level?

The question is not whether a student would be embarassed by a parental determination to exclude the student from a voluntary preopening devotional assembly in the school classroom, but rather whether the Supreme Court will eliminate in a broad sense the ability or need for individual parental decision-making regarding children's activities in the public school setting?

The question is not whether exposing a student from an agnostic family to the vertical assumptions in our national and state history will lead to an establishment of religion, but whether the "coercion" assumed to exist in such a setting prohibits not only (1) intellectual integrity in the academic setting would acknowledge the existence of such values in national or state history, but also (2) the affirmative teaching of any positive character values at all?

The question is not whether the Barnette decision and its progeny have contributed to the failure to incorporate state and national religious history in many textbooks as an effort to avoid possible litigation, but rather, whether the readoption by a national or state court of vertical assumptions will mandate the non-inclusion of horizontal thought in subsequent textbooks?

Possible legal ramifications of the methodology used by the Supreme Court to reconcile its decisions to horizontal assumptions in Barnette and its progeny can be expressed in the following questions:

Since Barnette used the national response to the challenges of the Great Depression as a basis to reject all its prior precedent which incorporated vertical assumptions, why could not a more conservative Court use a similar political response to an economic crisis to reject all of the post-Barnette precedent and impose a fundamentalist perspective, just as it now imposes a secular, agnostic perspective?

If those acting to prevent the "establishment of religion" have the option to seek invalidation under state law, even when the practice is held to be constitutional under federal law, will a recognition of "secular humanism" (as a philosophy which performs the central role in one's life that religion does in the life of one who accepts vertical assumptions) allow fundamentalists to have opportunities on a state and federal level to invalidate the government teaching of horizontal assumptions on "establishment" rather than "free exercise" grounds?

If the post-Barnette decisions either (1) no longer recognize the existence of a natural law and conscience premised on theistic or absolutist assumptions, or (2) lead to a theory of "coercion" which presupposes the exclusive validity of behavioristic teaching techniques, then upon what principled basis can the international laws of war or the legal precedent of the Nuremburg trials be used as a standard to judge combatants in a postwar setting whose governments did not teach or encourage adherence to the standard?

Does the assumed "coercion" in the public schoolroom when the vertical concepts are presented to a student or to the lay teacher in the parochial school setting negate the assertion in the Declaration of Independence that truth is self-evident?

If truth is not self-evident, and free will does not exist, so as to prevent "coercion" when individuals are presented with an idea, on what basis do individuals choose to govern themselves in a democratic setting?

If the Barnette decision and its progeny are based on the assumption that a pluralistic society cannot through elected representatives achieve acceptable consensus on admittedly significant matters, to whom will the Court eventually turn to enforce its determination of what will be societal consensus?

Conclusion

Like academia, the Supreme Court of the United States has followed a modern trend in Western culture--replacing the vertical assumptions inherent in the creation of American democracy with horizontal assumptions which seek to negate the validity of the prior assumptions.

The Court's adoption of horizontal assumptions was applied to public education in the 1943 case of West Virginia Board of Education v. Barnette. Thereafter, the Supreme Court has followed a pattern of allowing greater deference to individual decision-making as against those made by societal institutions, a process assumed to instill morality in the rising generation by reconciling its decisions with two tacit standards. First, vertical assumptions are not to be made part of the decision-making or teaching process by any branch of government. Second, judicially created liberty is best preserved by consolidating power in the national government.

The adoption of these standards,[31] however, has lead not only to inconsistent application of the Court's pronouncements, but legal methodology has been established which could be used in the future to prohibit the consideration of any horizontal assumptions in the decision-making or teaching process by any branch of government.

We believe that the *exclusion by law* of either vertical or horizontal thought lacks intellectual integrity and negates the very assumptions that are necessary to preserve liberty among a people whose society began with the recognition that man is inherently free by reason of his relationship to the Divine Creator.

Endnotes

1. Flavius Josephus, Antiquities of the Jews "Flavius Josephus Against Apion", Book 1:26; Dio Chrysostom "Oration on the Knowledge of God," 12:15; H. Nibley "Three Shrines: Mantic, Sophic and Sophistic" (unpublished paper, retyped mss., Brigham Young University) 1987.
2. Erwin R. Goodenough Jewish Symbols in the Greco-Roman Period Vol. I, (Pantheon Books, 1965) pp. 8-22.
3. Walter Lippmann A Preface to Morals (The MacMillan Co., 1929); John Hermann Randall The Making of the Modern Mind (Houghton-Mifflin, 1926). It should be noted that some elements associatedwith the term supernatural, such as magic and certain types of mysticism, may actually be sophic rather than mantic--because they are human constructs rather than divine realities.
4. H. Curtis Wright "The Central Problem of Intellectual History" Scholar and Educator Vol. 1988. pp.
5. See J. Gresham Machen Christianity and Liberalism (1923); Walter Lippmann A Preface to Morals (1929); John Crowe Ransom God Without Thunder (1930); Danial Kulp II Educational Sociology (1932); C. S. Lewis The Abolition of Man (1947); David Ehrenfeld The Arrogance of Humanism (1978); Mary Lystad From Dr. Mather to Dr. Suess (1980); Malcolm Muggeridge The End of Christendom (1980); Daniel Yankelovich New Rules in American Life (1981); Marvin Harris Why America Changed (1981); Peter Dobkin Hall The Organization of American Culture (1982); A. J. Reichley Religion in American Public Life (1985); G. Roche's A World Without Heroes: The Modern Tragedy (1987); as examples from various disciplines of this library.
6. Quoted in Hoffding History of Modern Philosophy, London, 1900, Vol. II, p. 28.
7. Neil J. Flinders "Public School Textbooks: Reflections of a Shift in the Philosophical Foundations of American Education" Philosophy of Education Proceedings (FWPES), 1986 pp. 81-92; Paul C. Vitz Censorship: Evidence of Bias in Our Children's Textbooks (Servant Books, 1986).
8. Irving Kristol On the Democratic Idea in America (Harper Torchbooks, 1973) pp. 27, 29.
9. George Roche A World Without Heroes: The Modern Tragedy (Hillsdale College Press, 1987) pp.131-32.
10. Paul C. Vitz, Op. Cite, p. xiii.
11. Georgia Harkness The Modern Rival of Christian Faith, MCMLII, p. 11.
12. Arnold E. Loen Secularization: Science Without God, 1967, p. xiii.
13. Gabrial Vahanian The Death of God, 1957, p. xiii.
14. Lewis M. Bastian "The Intents of Schooling in Western Culture and its Primary Antecedents: An Annotated Bibliography with Findings" (Unpublished Dissertation, Brigham Young University, 1987).

15. Ibid. p. 14.
16. Friedrich Solmsen Intellectual Experiments of the Greek Enlightenment, p. 3.
17. Ibid. p. 5.
18. Ibid. p. 130.
19. B. Carmon Hardy "Et Vocasti Gentes in Hereditatem Tuam: Secular Knowledge and the Early Christians" Paedagogica Historica, vol. 8, 1968, pp. 19-20.
20. Ibid. pp. 19-41
21. Matthew F. M. Hilton "A Preliminary Examination of the Contextual Framework in United States Supreme Court Decisions and Fifty State Constitutions Regarding Theistically Based Moral Education" (Unpublished Dissertation, Brigham Young University, 1988).
21. Ibid. p.
22. In 1940 the due process clause of the Fourteenth Amendment was interpreted by the Court to impose on the states the prohibitions of at least the First Amendment of the Bill of Rights. This is why 1868 (the year of adoption of the Fourteenth Amendment) was selected as a point of division in the treatment of the data in this study.

    To illustrate ramifications of this transformation in thought and act, Hilton cites two cases that came before the Court during the decade of the 1940s. In 1940 the Court rendered a decision regarding Minersville School District v. Gobitis; in 1943 it reversed itself in West Virginia Board of Education v. Barnette. In Gobitis, the Court reviewed a challenge by the father of a family following the faith of the Jehovah's Witness denomination, to a compulsory flag salute requirement in a school district of Pennsylvania. The father's challenge maintained that requiring the Pledge of Allegience violated his faith's interpretation of the command in Exodus 20:12 to have no graven images. A majority opinion joined by seven members of the Court found that the practice was constitutional and that the student would have to continue going to private school, having been expelled from public school for refusing to follow the school district's practice. Three years later in Barnette, six members of the Court joined in a majority opinion which found the identical practice unconstitutional when applied to members of a family of the same faith who were living in a district that had adopted a State Board of Education policy established in reliance on the Gobitis decision.

What makes these two cases significant is not the subject or the facts in the case, but the mindset and subsequent rationale used by the Court in reaching its decisions.

During the pre-Fourteenth Amendment era (1790-1868), the Court reflected a consistent, holistic integration of law that sustained theistically based morality. During the post-Fourteenth Amendment period (1868-1943), this consistency is not evident in

the Court's opinions. Instead, there is abundant evidence of significant changes in the Courts contextual framework during this period. Decisions rendered during this period reflect confusion and conflict in relationship to the application of legal standards and precedent. These changes, according to Hilton, are evident in the Court's perception of inalienable rights, constitutional adjudication, and the reconciliation of the absolutes of a Higher or Natural Law with man's law. He notes that "at times, the conflicts which arose between competing ideas during this period resulted in a clearer articulation of the assumptions and premises of the Court than was expressed in the pre-Fourteenth Amendment period when the prior assumptions were not challenged." It was the cumulative impact of these new assumptions on the mindset of the Court that appears to have sustained the surprising reversal of Gobitis in the Barnette case. This change is symbolic of the new world-view reflected in expressed opinions of the U. S. Supreme Court since World War II. The consequence has been a marked change in the Court's perception of the social fabric, enveloping education as well as other aspects of the social order.

23. Lemon v. Kurtzman, 403 U. S. 602, 612 (1971).
24. Zorach v. Clauson, 343 U. S. 306, 310 (1952).
25. Edwards v. Aguillard, supra, at 2579-2583 (1987), and cases cited therein.
26. Bethel v. Frazier, 106 S. Ct. 3159, 3165 (1986).
27. Engel v. Vitale, supra, at 1263; School District of Abington Township v. Schempp, supra, at 207-208.
28. New Jersey v. T. L. O., 469 U. S. 325, 332-337 (1985).
29. Tinker v. Des Moines School District, 393 U. S. 503, 506 (1969).
30. Planned Parenthood of Missouri v. Danforth, 428 U. S. 52, 73-75 (1976), and its subsequent progeny.
31. The authors believe that this trend can be reversed by affirmative action on the part of both educators and those associated with the law. Usurpation of rights by judicial law--whether dominated by secularists or fundamentalists--is equally reprehensible. Nonetheless, adoption of and continued recognition of vertical rather than horizontal assumptions will, in the final analysis, result in greater continuation of the ability to choose freely on an individual level, than the imposition of horizontal assumptions as a matter of constitutional law by the judiciary.